

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: January 22-23, 2003

Reference No.: 4.12
Action Item

From: ROBERT L. GARCIA
Chief Financial Officer

Prepared by: Brice Paris
Division Chief
Right of Way

Ref: **PUBLIC MASS TRANSIT AIRSPACE LEASE DISCOUNT**

RECOMMENDATION:

It is recommended that the California Transportation Commission (Commission) approve a proposal whereby future airspace leases to public mass transportation agencies can be offered with a twenty-percent (20%) discount from the established fair market value. It is believed such a discount will make more funds available to the agencies for mass transportation purposes while at the same time establishing a credible process to further the goals of both the Department and the Governor to make transit a more practical travel option. This discount proposal was reviewed and recommended for Commission approval by the Airspace Advisory Committee (AAC) on November 4, 2002. In approving this proposal, Resolution G-01-12, Procedure for Leasing Airspace to Public Entities, is amended by the attached Resolution G-03-__.

BACKGROUND:

Pursuant to Commission Resolution G-01-12, the Department may enter into leases with public agencies without specific Commission approval for each airspace lease whenever the Department finds:

1. That the lessee is a public entity as defined in the Public Contracts Code.
2. That the lessee will fulfill a public purpose.
3. That the Department will receive fair market rent for the property.

Furthermore, Resolution G-01-12 states that all leases or other written agreements with public entities for mass transit facilities, for less than market rent, will require specific Commission approval.

This new Resolution, amending Resolution G-01-12, would restate that the Department may enter into airspace leases with public mass transportation agencies at fair market lease rates less a twenty percent (20%) discount, subject to specific Commission approval. Commission approval would be contingent upon review by the AAC who would recommend such approval. The review by the AAC would determine that the agency in question was a public agency and that the proposed use was directly related to a mass transportation purpose, facility or project. The proposed use of the airspace site by a public mass transportation agency must be such so as to reasonably convince both the Department and the AAC the 20% discount is appropriate for the circumstances. Such use would reasonably and with good conscience permit the AAC to recommend approval for the proposal to the Commission. If such use could not be argued or demonstrated, the public agency would still be allowed to lease airspace without AAC review and Commission approval as long as fair market value for the property was received by the Department.

Airspace revenues are deposited into the State Highway Account and are then transferred to the Public Transit Account. The funds are then made available for programming and allocation by the Commission for mass transportation projects. It is believed this discount proposal will have minimal effect on airspace revenue streams. It will, however, provide some financial assistance to public mass transportation agencies interested in leasing airspace sites from the Department. This proposal will also acknowledge the Department's commitment to congestion relief and improved mobility through mass transit. This discount program also keeps intact basic airspace procedures and clarifies and simplifies the role of the AAC in their review of public mass transportation airspace proposals.

Attachment(s)

CALIFORNIA TRANSPORTATION COMMISSION

Procedure for Leasing Airspace to Public Entities

Resolution G-03-__ Amending Resolution G-01-12

- 1.1 WHEREAS, Section 104.12(a) of the Streets and Highways Code authorizes the Department of Transportation to lease the use of airspace above and below State highways to public entities in accordance with procedures to be prescribed by the California Transportation Commission; and
- 1.2 WHEREAS, Section 104.12(b) of the Streets and Highways Code authorizes the Department of Transportation to make airspace available, with or without charge, to public entities for mass transit facilities; and
- 1.3 WHEREAS, Section 14013 of the Government Code provides that the Director may lease airspace to local agencies for public purposes and may contribute toward the costs of developing local parks and other such recreation facilities on such areas;
- 2.1 NOW THEREFORE BE IT RESOLVED that the California Transportation Commission hereby authorizes the Department to enter into leases with public agencies without specific California Transportation Commission approval for each airspace lease whenever the Department finds:
 - That the lessee is a public entity as defined in the Public Contracts Code.
 - That the lease will fulfill a public purpose.
 - That the Department will receive fair market rent for the property.
- 2.2 BE IT FURTHER RESOLVED THAT ~~all leases or other written agreements with public entities for mass transit facilities, for less than market rent, will require specific California Transportation Commission approval;~~ **the Department may enter into airspace leases with public mass transportation agencies at fair market value lease rates less a twenty percent (20%) discount, subject to specific California Transportation Commission approval;**
- 2.3 BE IT FURTHER RESOLVED that when it is determined that park or recreational use is appropriate, the Department may use as all or part of the consideration for a lease for park or recreational purposes any substantial benefits the Department derives from the local agency's maintenance or landscaping costs which would otherwise be the obligation of the Department whenever the Department finds:
 - That the lessee is a municipality or other local agency as defined in the Government Code.
 - That the use is for park or recreation purposes only.
 - That the lessee agrees that whenever the leased land is needed for transportation purposes the lease shall terminate.
- 2.4 BE IT FURTHER RESOLVED that Resolution ~~G-6 is hereby replaced.~~ **G-01-12 is hereby amended.**